UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1159
24 July 1992

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-fifth session

SUMMARY RECORD OF THE 1159th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 20 July 1992, at 3 p.m.

Chairman: Mr. POCAR

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Second periodic report of Peru (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.92-16507/4697B

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Peru (CCPR/C/51/Add.4, 5 and 6) (continued)

1. The CHAIRMAN invited the Committee to continue consideration of the two addenda (CCPR/C/51/Add.5 and 6) to the second periodic report of Peru (CCPR/C/51/Add.4).

2. Mrs. HIGGINS expressed appreciation of the Peruvian delegation's presence at the meeting, and thanked the Government of Peru for its supplementary reports and its willingness to continue the dialogue with the Committee. It was, however, essential that the discussion should be a constructive one, instead of which she feared there was a danger that it would become a dialogue of the deaf. The delegation's intention in showing the video at the previous meeting had clearly been to bring the reality of the situation home to members of the Committee, but in fact they had all been very well aware of that reality from the time of the previous session. They were appalled by the terror existing inside the country and by the atrocities committed, particularly by Shining Path. The problem was how to deal with that reality within the framework of the law, including permitted derogations from the Covenant, for no one denied that the situation was sufficiently grave to justify some derogations. The reaction must not, however, be such as to exacerbate lawlessness. Absolutely nothing in the two new reports (CCPR/C/51/Add.5 and 6) reflected the dialogue at the Committee's previous session or the events of 5 April. The Committee had indeed received a copy of the Manifesto to the Nation of 5 April and a copy of Decree-Law No. 25418, but neither indicated which rights had been suspended. She understood from comments attributed to the President of Peru by the press that not all articles of the Constitution had been set aside, but, as Mr. Aguilar Urbina had pointed out, the Committee did not know the extent of derogations from articles in the Covenant. Those were matters that the Committee members could reasonably have hoped to see addressed in the supplementary reports. Another opportunity to clarify the situation had been offered by the letter of 12 June 1992 from the Peruvian Ambassador to the Secretary-General. It was true that reference was made in it to derogations from articles 9, 12, 17 and 21 of the Covenant. They did not, however, relate to the events of April 1992 but to an earlier period, from 26 August 1990 to 28 March 1992. She hoped that that unsatisfactory situation could be promptly rectified. As to the long-awaited Human Rights Commission, she was not sure whether she had correctly understood Ms. Linares to say that it had been decided to include as members representatives of the State prosecution services and of the Defence Ministry. If that was so, she would like to have further information about the rationale of the Commission's membership, since that was bound to affect its character.

3. She took the opportunity to remind the delegation that the Government of Peru had been asked, at the spring session, for information concerning communications Nos. 203 and 209 of 1986, which had still not come to hand.

4. Mr. AGUILAR URBINA thanked the Peruvian delegation for appearing before the Committee and the Peruvian Government for the two supplementary reports. Unfortunately, the first such report (CCPR/C/51/Add.5) failed to answer practically any of the questions which the Committee had put at the previous session and the second (CCPR/C/51/Add.6), which was also extremely laconic, did nothing to resolve the Committee's doubts about the events of 5 April 1992. It was highly regrettable that so simple a request as to report on the articles of the Covenant which had been suspended or derogated from by Decree-Law No. 25418 had not been complied with. The second supplementary report was a slim document of eight pages, the first two of which merely reproduced Decree-Law No. 25557 together with a list of the names of the President and various Ministers. Pages 3-5 were taken up with an introduction which read more like a political manifesto than anything else. As Mr. Myüllerson had pointed out, the effect was likely to be counter-productive. It had the appearance of an attempt to obscure the reality of the situation behind a screen of words - "democracy", "nation", "chaos", "terrorism", "human rights", and the like. Only in the last two-and-a-half pages was any attempt made to answer the Committee's requests for information. Even then much of the material was irrelevant, such as that relating to the abolition of slavery and the principle of non-imprisonment for debt. In paragraph after paragraph reference was made to various international human rights instruments affording protection of various rights, but nowhere was the Committee told how those rights might have been affected by the recent decrees. That was a very grave matter. If the Committee had needed a list of instruments, it could have obtained a more complete one from the Secretariat.

5. Turning to specific points, he said that paragraph 11 of the document implied that some articles of the Constitution were still in force, but the real situation appeared to be quite the contrary. As Mr. Prado Vallejo had pointed out, what had happened in Peru on 5 April could only be described as a coup d'état. Indeed, the paragraph virtually admitted as much. With Decree-Law No. 25418, the Executive had arrogated to itself powers denied to it by the Constitution, and that amounted to a breakdown in the constitutional order, which the President himself had undertaken to uphold at the meeting of Foreign Ministers of the Organization of American States (OAS) held at Nassau on 18 May. It was distressing to witness the overthrow of a democracy which had been the pride of Latin America and the first to emerge after the dictatorial regimes of the 1960s and 1970s. The statement in paragraph 11 that a very high percentage of the Peruvian people supported the measures taken by the Government did not indicate such action. Democracy had to operate within very clear rules and, when they were broken, it ceased to exist. The objectives of the Peruvian Government, as set forth in the Decree-Law, were entirely praiseworthy, but they should be achieved by democratic methods. The terrorist acts being perpetrated in Peru were abhorrent, and he had repeatedly denounced them at the previous session; terrorism had to be repressed, but it must be within a democratic framework. The goals and actions, amounting to genocide, of Tupac Amaru and Shining Path were widely known, but Latin American experience had demonstrated over and over again that insurgent terrorism could not be overcome by State terror, and that corruption - that scourge of Latin America - had to be fought on all fronts but not by assuming absolute power, which itself engendered corruption. The people of Peru had been made well aware of that fact by their experience of the 1970s. What was difficult to accept was the picture of the extent of

corruption given in the introduction to the second supplementary report (CCPR/C/51/Add.6), where it was said to pervade all branches of government except the Executive. It was also difficult to accept as justified the complaint in paragraph 3 that the National Congress had restricted the functions of the President of the Republic. Surely that was part of the democratic process - what was called in English a system of "checks and balances" - that had operated successfully, under the United States Constitution for over 200 years, but no longer existed in Peru. It was also interesting to note that paragraph 12 of document CCPR/C/51/Add.6, claiming the existence of unrestricted freedom of the press in Peru, said that such freedom was valuable because it publicized the suggestions of leaders of the opposition - the very opposition that was otherwise criticized as corrupt! If the views of the opposition were worth listening to, what need had there been for the coup d'état? He also saw a contradiction betweeen the proclaimed objectives of promoting a market economy in a stable and secure society, which were clearly long-term goals, and the assurance given by the President of Peru at Nassau that the measures taken by the Government were only temporary.

6. What caused him the gravest concern was that, in admitting to having usurped power, as the Peruvian Government in effect did in paragraph 11, it placed itself in the situation whereby, under the very article of the Constitution - article 82 - invoked in the same paragraph, it must accept that all its acts since 5 April, including the submission of the report, being those of a usurping authority, were null and void. The consequences were appalling: the armed forces lost their legitimate status and became no more than a private militia, as illegitimate as the very terrorist bands they were called upon to combat. The Judiciary also was stripped of its legitimate functions, and he noted in that context that many of the judges dismissed by the usurping authority had filed applications for amparo, on the grounds that their dismissals were not in accordance with law. In short, Peru, which at the time of the Committee's spring session had still been a State subject to the rule of law, had since 5 April been a State outside the law.

7. With regard to the riot at Castro Castro Prison, referred to in paragraph 9 of the document, which had also figured in the video shown by the Peruvian delegation, it seemed hardly credible that the detainees should have been able to train and march while in custody, as they had been shown to do in the video, or to print the pamphlets they had been shown distributing. Another disconcerting aspect of the affair was the number of fatalities, said to have been between 40 and 50. However grave the crimes they might have committed, detainees had human rights too. The pictures of the peasant patrols spending time making weapons when that time could have been used for the building of schools and hospitals were also saddening.

8. He would be grateful to Ms. Linares for clarification on several matters she had mentioned. She had referred to the establishment of a Peace Commission and to Legislative Decree No. 695 providing for inspection visits by government procurators to security establishments. What, he wondered, was the point of such visits when there was no longer any distinction between government procurators and the government armed forces? He would also welcome clarification on what she had said concerning United States aid for the national register of detainees since it was his understanding that the United States Government had suspended that aid in consequence of the

coup d'état. Above all, what the Committee wanted, in his view, was precise information about how the Peruvian system was functioning. The Committee wished to be of assistance, but it could hardly achieve that if its help appeared to be unwanted.

9. Mr. LALLAH expressed appreciation of the Peruvian delegation's presence before the Committee. He hoped that it would be able to provide information that, in his view, should have been included in the supplementary reports. His clear impression was that, at the spring session, Peru had been asked to submit a special report, in line with article 4 of the Covenant. That did not seem to him to be at all what the Committee had received. The situation in Peru did not correspond to what he understood an emergency situation to be - one that arose quite suddenly, not one that had built up over a period of time and finally resulted in the State changing its nature. The report seemed to be saying that democracy had been something of a sham culminating in the presidential message of 5 April (para. 7 of the document). That did not appear to him to be the description of an emergency situation such as was envisaged in article 4 of the Covenant, but rather an evolving process leading to a decision by the Head of State to change the conduct of public affairs.

10. The introduction to document CCPR/C/51/Add.6 suggested that important agencies of the State had not only been failing to perform their duties but had been undermining the institution of democracy itself. In paragraph 34 of the periodic report itself (CCPR/C/51/Add.4), however, it was stated, in relation to article 4 of the Covenant, that the states of emergency in Peru had been due mainly to subversive movements in certain areas of the country, which threatened the infrastructure of many public services, and strikes which undermined the rather complex economic and social situation in the country, and in paragraph 35 it was stated that in most cases work stoppages had been settled through ordinary legal procedures. That was, of course, said with reference to the past, but it seemed to him that either the main report was not consonant with reality or some very drastic change must have occurred since it had been submitted. However, in the supplementary reports (CCPR/C/51/Add.5 and 6) he found no information pointing to the occurrence of such a change. As Mrs. Higgins had said, there seemed to be no constructive discussion on that point but rather a dialogue of the deaf. The reports told the Committee nothing about the reality of the situation in Peru but merely gave an account of legal texts. He hoped that, when the Peruvian delegation attempted to answer the many questions posed by members of the Committee, it would bear in mind the need to clarify that confusing situation.

11. Ms. LINARES ARENAZA (Peru) said that since 5 April 1992, in demonstration of its firm commitment to restore as rapidly as possible a system characterized by genuine democracy based on representative institutions, the Government had voluntarily placed itself under the jurisdiction of OAS as far as the establishment of mechanisms for the holding of elections was concerned. The current state of affairs was viewed as exceptional and temporary, and everything possible was being done to bring it to an end.

12. The state of emergency established in accordance with article 231 of the Constitution had led to no derogation whatsoever from articles 6, 7, 8 (1) and (2), 11, 15, 16 or 18 of the Covenant.

13. The Ministry of Justice had undertaken the reorganization of the Judiciary, with assistance from the United Nations; discussions were due to take place on 23-24 July in Bogotá. In the meantime, although there had indeed been a brief suspension of its activities following the measures of 5 April, the Judiciary was functioning normally at all levels; if anything, and despite continued acts of terrorism, the Attorney-General's Office was more active than before on behalf of human rights.

14. Concerning the events at Castro Castro Prison, she recalled that a mutiny had been sparked off by action taken for humanitarian reasons and in the presence of representatives of the Attorney-General's Office to transfer female inmates to another place of detention. Two unarmed police officers who had entered the prison had been savagely murdered; some 40 deaths and as many injuries had subsequently occurred among prisoners and the police. There had been absolutely no intention to wreak violence or to exterminate individuals. Restoration of order had been the sole objective; she categorically denied any participation by the armed forces. Not only was it government policy to restore and maintain order in places of detention, other measures to reduce tensions were also under way. Decree-Law No. 25499 established conditions for the remission of sentences for acts of terrorism; Decree-Law No. 25582 provided for the exoneration from penalties of persons who furnished useful information during investigations. In the broader context, mention should also be made of a number of other remedial measures instituted by the Government, including a fund for compensation and development; education and training projects; a national food programme; and a five-year plan of action for children. Special attention was being paid to the needs of disadvantaged urban populations.

15. Concerning enforced disappearances, officials found guilty of such acts would be punished in accordance with Decree-Law No. 25592. A nationwide network of registers of detainees, deposited with all the country's police stations, was being set up to facilitate the dissemination of information to prosecutors and human rights bodies (including the National Human Rights Council, which was expected to be re-established shortly on the basis of broad representativeness), and the speedy investigation of alleged disappearances.

16. If her delegation had seen fit to make a video presentation to the Committee, that had not been with the desire to sensationalize the portrayal of a reality with which the Committee's members were already familiar, but rather to illustrate the level to which terrorist activities had risen in recent months. She added that some of the material originated with sources not particularly favourable to the Government's policies. Excesses had certainly been committed in implementing the anti-terrorist strategy, but she stressed that there was no state of permanent impunity for offenders in that connection.

17. She concluded by emphasizing that the atmosphere of extreme political violence in the country had failed to destroy the determination progressively to assure a return to normality under OAS jurisdiction, to assume greater responsibilities in the matter of human rights, and to secure the meaningful dialogue between the political parties and other organs and institutions representative of the masses that would pave the way for properly held elections. She urged the Committee to set the present situation, as reflected in the latest information, in its broader context.

18. Mr. AGUILAR URBINA said that the many questions that remained unanswered included one which cried out for an unequivocal response: was the Constitution of Peru still in force?

19. He submitted that in referring twice to the "jurisdiction" of OAS, the representative of Peru had not been altogether accurate. The President of Peru had indeed addressed that Organization and given a number of general undertakings, but that was not the same thing. Moreover, the concern of the Committee, most of whose members did not come from OAS countries, was with the observance by the Peruvian Government of its responsibilities under the Covenant.

20. Not for the first time, he was distressed to find that accounts of what was undeniably a frightful pattern of terrorism had obscured detailed information as to the real problems and how they were being addressed. The Judiciary was obviously deeply affected, but exactly how - and what was being done to remedy the situation - remained unclear: he recalled his earlier remarks concerning judges who themselves had applied for amparo. Under the prevailing circumstances, was the independence of the Judiciary and, for that matter, of the Attorney-General's Office, ensured?

21. His own personal friendship for Peru and its people, and his deep sympathy for the country's predicament, made it painful for him to say what none the less must be said: the Committee's questions remained unanswered and the dialogue so greatly hoped for had not taken place. That, to his mind, augured badly for the "national dialogue" announced in paragraph 15 of the latest report (CCPR/C/51/Add.6).

22. Mr. PRADO VALLEJO, after commending the representative of Peru on a dignified if inevitably limited contribution to the discussion, observed that what could only be described as a coup d'état and the institution of a dictatorship had exacerbated difficulties caused by the indecisiveness of a Government which had proved incapable of preventing exactions by the country's armed forces and ensuring respect for human rights.

23. In seeking, nevertheless, to understand the present situation more clearly, he would ask, with reference to the period since 5 April 1992: how many political prisoners were held in detention; whether the remedy of habeas corpus was still available; whether there had been more, or fewer, disappearances; which authority prevailed in the so-called "emergency zones" and whether the number of such zones had increased or diminished; whether the announced register of detainees took account of individuals detained by the armed forces, which were notoriously dilatory in providing information; and how many judicial investigations had been conducted with regard to alleged violations of human rights or disappearances occurring in cases handled by military tribunals.

24. Lastly, while acknowledging that OAS had tried to assist in promoting national dialogue, he feared that the undertaking had been doomed: all that OAS had achieved, perhaps, was abandonment of the lesser evil of a plebiscite in the place of the promised elections. For the rest, he found that there had been virtually no change in the situation in Peru since the Committee's previous session.

25. Mr. MYULLERSON, after expressing sympathy with the representative of Peru in what must be a difficult situation, said he would nevertheless appreciate a clarification of the constitutional provisions under which Parliament had been dissolved and the functioning of the Judiciary suspended. What was the legal justification for what he understood to have been derogation from the provisions of articles 9, 12 and 17 of the Covenant? Lastly, how, in the absence of specific laws, could the Peruvian delegation claim that article 8 of Decree-Law No. 25418 must be interpreted in a restrictive manner, since that article declared the suspension of all the articles of the Constitution and of other laws which were not in accordance with the Decree-Law itself?

26. Ms. LINARES ARENAZA (Peru) said she wished to make it clear that the national dialogue announced in paragraph 15 of the latest report would take place between the President and all political parties, as well as organizations and institutions representative of the Peruvian people, and not merely with groups especially favourable to his own views. She saw no reason why that dialogue should prove fruitless, and why the election of the Democratic Constituent Congress should not take place as planned.

27. In response to other questions, she said that there were currently no political prisoners in Peru, and that the freedom of expression was fully respected and exercised; habeas corpus was fully maintained; under article 231 of the Constitution, the Peruvian armed forces assumed control of the internal order in the emergency zones; and military tribunals passed judgement exclusively on members of the armed forces and the police. Despite prevailing conditions, there had been no recent increase in the number of declared disappearances - and she referred the Committee to her earlier remarks concerning the establishment of a nationwide register of detainees and the investigation of alleged disappearances.

28. It was her delegation's sincere desire to pursue a meaningful dialogue with the Committee, and all possible channels of communication must remain open in that regard. Moreover, the Committee itself was in a position to provide real assistance in ensuring more adequate and effective implementation of human rights in Peru: she urged its members to avail themselves of that opportunity with all the means at their disposal.

29. Mr. HERNDL said that the supplementary information provided by the Peruvian delegation failed to respond to the Committee's decision of 10 April 1992 and its specific request for information relating to events subsequent to the suspension of the constitutional order in Peru. The Committee was still very much in the dark as to the legal consequences of the events of 5 April and of their impact on the functioning of democratic institutions.

30. He himself was especially concerned with the consequences of those events for the provisions of article 6 of the Covenant and the right to life. Although the realities in Peru, and the predicament of the Government, had been brought home forcefully to the Committee both at the current and at the previous session, members were agreed that the struggle against terrorism could not excuse failure to comply with the provisions of the Covenant, especially those from which no derogation was permitted. News of disappearances, of torture and of extrajudicial executions by the security forces since 5 April thus gave rise to particular disquiet, which was

certainly not dispelled by the somewhat laconic statement in paragraph 23 of document CCPR/C/51/Add.6 that the right to life was proclaimed in the Constitution and respected "from conception".

31. Another important issue was that of adequate human rights training for the police and the armed forces. The second periodic report stated that the police were trained to respect the national and international regulations concerning the right to life and physical integrity of detainees (CCPR/C/51/Add.4, para. 38): the supplementary information provided by Peru stated that, under Legislative Decree No. 752, training programmes for officers in the armed forces should be designed to make them into "qualified agents in the preservation of national security, the defence of human rights and the promotion of development" (CCPR/C/51/Add.5, para. 11). When had Legislative Decree No. 752 been adopted? The same report also stated (para. 12) that the Ministry of Defence was setting up human rights offices in all military districts to instruct officers and non-commissioned officers in human rights issues. He would welcome more information about the content of all human rights training programmes. Moreover, it seemed that the new human rights offices considered allegations of violations of human rights by the armed forces and prosecuted suspected offenders. That surely meant that they constituted a new means of recourse against alleged human rights violations. He would, accordingly, like to know on what authority the human rights offices carried out investigations and prosecutions, and whether the trials of alleged offenders were conducted in accordance with the Penal Code and the Code of Penal Procedure. Were military personnel accused of human rights offences no longer subject to the system of military justice?

32. His next point concerned the criminal responsibility of minors. According to Peru's initial report (CCPR/C/6/Add.9) and also an addendum to the second periodic report (CCPR/C/51/Add.5, para. 19), persons under 18 could not be charged and were not liable to criminal penalties. Nevertheless, paragraph 4 (c) of the same addendum referred to juvenile courts. What were the duties of the juvenile courts, and which defendants came before them?

33. His last question concerned article 27 of the Covenant, on the rights of minorities. At the previous session, he had been pleased to note the efforts of the Peruvian Government to guarantee the autonomy of native communities. However, the new information submitted to the Committee at the current session referred to the "peasant patrols", which surely had nothing to do with the rights of minorities. The Government had stated that the peasant patrols existed to defend their land and cooperate with the authorities in eliminating crime (CCPR/C/51/Add.5, para. 28). They seemed to him to be a highly dangerous development. He would like to hear more about the activities of the patrols concerned and how the Government controlled them.

34. Mr. AGUILAR URBINA said he had still received no answer to his questions about the present status of the Peruvian Constitution and the authority under which the present Government operated. Reference had been made to many rights which were guaranteed by the Constitution, including the right to life (CCPR/C/51/Add.6, para. 23), but those guarantees were worthless if the Constitution was not in force. Had certain rights under the Constitution been suspended and, if so, which ones? Information he had received from non-governmental organizations referred to a campaign of assaults, sabotage

and executions by the armed opposition groups Shining Path and the Tupac Amaru Revolutionary Movement and also to extrajudicial executions by the security forces. He also had information about a directive dating from June 1991, which authorized troops to kill people and dispose of the bodies, adding: "the only good insurgent is a dead insurgent". The Committee simply had to have more information about the situation.

35. Self-defence organizations such as the peasant patrols were common all over Latin America, but it was unusual for the State to recognize their activities (see document CCPR/C/51/Add.5, para. 28). Did that mean that the patrols were a State institution and that the State was answerable for the abuses and atrocities which they had allegedly committed? Surely their aim was not to "eliminate" crime, but to punish it? From the video which the Committee had seen at the previous meeting, it seemed that the patrols were particularly concerned with manufacturing weapons.

36. Miss CHANET said that the representative of Peru had consistently failed to answer the Committee's questions about the current status of the Constitution and the legal basis for the decree-laws which were the subject of the current debate. The Committee had been forced to fall back on deductions: the National Congress had been dissolved, so presumably at least some articles of the Constitution had been suspended, and the Peruvian delegation had appeared before the Committee, which presumably meant that Peru still considered itself to be a party to the Covenant. She could not understand the failure of the Peruvian delegation to explain exactly what the situation was.

37. In respect of article 6 of the Covenant, on the right to life, she inquired about the fate of eight people who had been arrested by the military on 27 April 1992 and had since disappeared without trace. Had there been any investigation of the case? The families of the individuals concerned had attempted to apply for habeas corpus, but they had been told that it was impossible to do so, since the Judiciary had been temporarily suspended after the events of 5 April. However, the representative of Peru had said that habeas corpus had remained in force at all times. Had habeas corpus been in force on 27 April, or not? Decree-Law No. 22592 stated that the "forces of order" could no longer cause people to disappear with impunity and that a sentence of "deprivation of liberty" could be imposed. Did the "forces of order" include the military, and what exactly constituted "deprivation of liberty"?

38. The representative of Peru had stated that there were no political prisoners in Peru. However, during the events of 5 April and their immediate aftermath, some 50 people, including journalists and former ministers of the government of Mr. Alan García Pérez, had been arrested, although they had subsequently been released. On what legal basis had they been detained?

39. Mrs. HIGGINS said that the Committee must be informed of any suspension of habeas corpus, however temporary. Habeas corpus was a non-derogable right under the Covenant, and must not be suspended in any circumstances.

40. In connection with article 25 of the Covenant, she asked whether all political parties would be able to participate in the elections to the Democratic Constituent Congress that was scheduled to take place on 22 November 1992. It seemed to her that one of the main aims of the

President's actions of 5 April had been to hamper the activities of opposition parties, such as the political wing of Shining Path and the American Popular Revolutionary Alliance (APRA), the party of former President García.

41. Mr. PRADO VALLEJO asked whether Mr. García Pérez, who had sought asylum in Bogotá, Colombia, would be allowed to return in order to participate in the elections. According to the latest Peruvian report (CCPR/C/51/Add.6, para. 28): "Any act prohibiting or restraining a citizen from participating in the nation's political life is invalid and punishable". Surely the President's actions of 5 April, which had suspended the activities of the National Congress and the Parliament, came into that category?

42. Mr. AGUILAR URBINA noted the statement in the same report (para. 11) that no one in Peru had been or was currently being subjected to political persecution. However, the Government had acknowledged that members of opposition parties had been detained in their homes or workplaces. There was an obvious inconsistency in those statements. The report likewise indicated that all those who had left Peru had done so of their own free will. However, anyone who had seen the pictures of Mr. García Pérez arriving in Bogotá under Colombian military escort could have been under no illusions that he had been freely exercising his right to leave his own country. A Peruvian television network had said that the security forces had gone into Mr. García's house with their guns blazing, leaving bullet holes in the walls. They had clearly intended to do more than arrest him, and why had they wanted to arrest him, anyway? If they had not been acting on the orders of the President, what had been the legal basis for their actions?

43. Further to Mrs. Higgins' question about habeas corpus, he would like to ask once again about the applications for amparo filed by judges after the events of 5 April, but refused by the executive. The latest report stated that citizens had the right to participate in public affairs (CCPR/C/51/Add.6, para. 28). However, President Fujimori's seizure of power on 5 April, which he had justified by references to corruption among opposition parties and attempts to wreck the economy, had in fact been designed to hamper the activities of the opposition. He would like to know more about the current status of opposition parties and the proposed Democratic Constituent Congress. Would the Congress guarantee citizens' rights to participate in public affairs in accordance with article 25 of the Covenant? And would Mr. García Pérez have the right to participate in the elections to the Congress on an equal footing?

44. Ms. LINARES ARENAZA (Peru), answering Mr. Herndl's question about human rights training for the police and the armed forces, said that the relevant law, Legislative Decree No. 752, had been passed by the Executive by virtue of powers delegated to it by Congress. The judicial procedure carried out by the Ministry of Defence and human rights offices (see document CCPR/C/51/Add.5, para. 12) was an internal investigative procedure which had some connection with the Office of the Attorney-General.

45. The peasant patrols were peaceful organizations working under government supervision. The army did not provide them with weapons; they made their own weapons, although that took time which they would rather spend cultivating their land. Unfortunately, their existence was essential at the present time.

46. Mr. Herndl had also inquired about juvenile courts. Offenders aged under 18 were not sent to prison, but to special institutions where they received guidance, rather than punishment. There were, accordingly, no juvenile courts.

47. In response to Mr. Aguilar Urbina's remarks, she could only say that, by virtue of Decree-Law No. 25418, the Peruvian Government was committed to fulfilling all its obligations under international treaties, including the Covenant. The directive authorizing troops to kill, to which Mr. Aguilar Urbina had referred, had never been an official directive, but was the work of a single officer, who had since been punished.

48. Members of the Committee had inquired about the current status of the Constitution. Under Decree-Law No. 25418, the Constitution was still in force, although some of its provisions had been temporarily suspended. However, they did not include any of the clauses dealing with the articles of the Covenant to which the supplementary reports referred.

49. Miss Chanet had referred to Decree-Law No. 25592 on the penalties for officials responsible for disappearances. The maximum penalty for such offences was 15 years' imprisonment. A national register had been set up at the Government's initiative to speed up the prosecution of those allegedly responsible for disappearances.

50. Miss Chanet had also referred to the remedy of habeas corpus. Habeas corpus had always been in force, despite the suspension of the Judiciary: she could only think that the persons referred to by Miss Chanet had been unable to file their application for habeas corpus within the prescribed time, or had encountered some other technical problem.

51. All political parties and all representative institutions or organizations in Peru which wished to do so would be able to participate in the dialogue leading up to the elections to the new Democratic Constituent Congress. To the question whether the former President of Peru, Mr. García, would be able to return to Peru at any time, in accordance with his right under the Covenant, the answer was that he would. He had not been forced into exile but had exiled himself voluntarily. Notwithstanding what had been said about his arrival in another country in custody, he had left Peru with full safeguards, accompanied by his lawyer who had also been able to leave without hindrance and could return at any time. The former President could return to the country when he wished and could participate in the dialogue on the convening of the election on the same basis as any other citizen belonging to any other political party.

52. In addition to the process of dialogue leading up to the elections for the Democratic Constituent Congress, a high-level commission was currently evaluating various proposals for improving the Constitution. When the Democratic Constituent Congress had been elected, it would be empowered to investigate the actions taken by the Government since 5 April 1992. That was a clear example of the Government's intention to comply with its undertaking to OAS.

53. In reply to the question about house arrest, she said that it had been a security measure whose immediate purpose had been to prevent Shining Path or Tupac Amaru from taking advantage of the situation to incite confrontations that would lead to uncontrollable disturbance.

54. She reiterated the Government's intention of returning promptly to constitutional government through the Democratic Constituent Congress, which would have legislative powers as well as the power to investigate the activities of the current National Government since 5 April 1992.

55. Mr. AGUILAR URBINA said the Committee had been told that the Constitution was still in force but that some provisions had, exceptionally, been temporarily suspended. He would like to know what provisions those were. Another interesting new feature was the high-level commission set up to evaluate proposed amendments to the Constitution. That commission was not mentioned in the addenda to the report and it would be interesting to learn who had appointed it and what its powers were. Reform of the Constitution would seem to be a task for the Legislature. He asked whether Decree-Law No. 25592 had been issued before 5 April, in virtue of powers delegated by the National Congress. He would like to know whether the procedures applicable to the armed forces were administrative or legal, or a hybrid of the two.

56. The information given on the house arrests and detentions that had taken place after 5 April seemed to agree with paragraph 10 of the addendum to the second periodic report (CCPR/C/51/Add.6). That paragraph, about temporary security measures taken under the state of emergency with a view to preventing disturbances and a situation that could be turned to advantage by Shining Path and the Tupac Amaru Revolutionary Movement, implied a connection between terrorist groups and political leaders occupying important posts in the Legislature and the Judiciary which would be serious indeed. The representative of Peru had also said that habeas corpus had never been suspended but that it was possible that, on some occasions, some persons had been unable to obtain access to it. He knew that former President García, for example, had tried to have recourse to that right. He would like to know the difference between suspension of habeas corpus and inability to have recourse to it.

57. Mr. MYULLERSON said the Committee had been told, in response to questions, that the freedom of those persons held under house arrest or detained on military or police premises had been limited because of the threat of action by Tupac Amaru and Shining Path. However, the Committee had also been informed that the detainees included parliamentarians, lawyers, trade unionists, journalists and a Supreme Court judge. He was surprised by the connection made between the house arrest and detention of such persons and the threat of terrorist action.

58. Miss CHANET associated herself with the question asked by Mr. Aguilar Urbina. It was important for the Committee to know the date of the Legislative Decree on the register of complaints of disappearances and the punishment of officials who caused such disappearances. The number of the decree indicated that it was subsequent to the dissolution of the National Congress. It was difficult to understand, therefore, how Congress could have

authorized it. The proposed penalty of 15 years' imprisonment was said to apply to members of the security forces but it was not clear whether members of the military were also liable to that punishment.

59. Mr. PRADO VALLEJO said that, according to a report he had received, the whole judicial system, the courts and the Government Procurator's Department, had ceased to function with the events of 5 April 1992. On 23 January 1992, Peru and the United States had signed an agreement whereby the United States had undertaken to finance the preparation of a register of detainees and the Government had undertaken to require the armed forces to provide information on persons being held in their barracks and other premises. The United States, however, had withdrawn its offer of assistance after the coup, the agreement had not taken effect, and the preparation of the register had lapsed. Thus, a very serious situation had arisen for the families of the disappeared. He asked how the Government had since made up for the withdrawal of United States aid, and also what its reaction had been to the report by the United Nations Working Group on Enforced or Involuntary Disappearances suggesting that the virtual impunity of the security forces in regard to human rights could be greatly reduced if there was an efficient and independent Judiciary capable of investigating complaints promptly and protecting human rights. The Working Group had reiterated that military tribunals should deal only with offences committed by the security forces, excluding grave infringements of human rights such as enforced disappearances.

60. Ms. LINARES ARENAZA (Peru) said that Decree-Law No. 25592 had established a register of complaints of disappearances. The register of detainees was a separate register administered by the Department of the Government Procurator. It was not currently receiving financial assistance from the United States but it was still being implemented using the funds of the Executive. The register operated by means of radio links between government procurator's offices all over the country.

61. She reiterated that the military courts did not try civilians. There had been some limited cases of excesses in that direction but the President had assured the country, in a recent speech in Ayacucho that there would be no recurrence of such incidents.

62. There appeared to be some confusion in the Committee about the house arrest of members of political parties. Those measures had been taken on security grounds, not because the persons concerned might be members of terrorist groups but because such groups might have taken advantage of the situation to create uncontrollable disturbances. The high-level commission to which she had referred would receive proposals for amendments to the Constitution put forward by political parties and by independent groups. Its primary mission would be to receive and evaluate those proposals before transmitting them to the new Constituent Congress. The proceedings held in the offices of the Ministry of Defence were administrative steps leading up to trial by the Judiciary.

63. Ms. SILVA y SILVA (Peru) said that, in order to prevent the immunity to prosecution of the armed forces referred to by Mr. Prado Vallejo, the Government had made causing an enforced disappearance an offence, for which not only public officials but also members of the security services could be prosecuted. In Peru, the security services included the armed forces and the

police. The offence had been made punishable by a term of up to 15 years' imprisonment. The action had been taken after the dissolution of the National Congress through the adoption of Decree-Law No. 25592 on 26 June 1992.

64. Mr. AGUILAR URBINA said it was clear that the combined system of the register of disappearances set up by the very recently adopted Decree-Law and the register of detainees that was to have been funded by United States assistance was not yet operating effectively. He had been glad to hear the admission that the military courts had committed excesses and the assurance that they would not be repeated. He found both of the explanations that had been put forward in defence of the house arrest of parliamentary deputies somewhat unconvincing. He would welcome more information on the high-level commission to be set up to study proposals for amendments to the Constitution. The information about the activities of the Ministry of Defence seemed to indicate that detainees were in fact held there.

65. Mrs. HIGGINS said that she had a copy of Decree-Law No. 25592 in her possession and that her understanding of it was the same as that of the Peruvian delegation. The new Penal Code approved in April 1991 had introduced the offence of causing someone to disappear. That provision had been strengthened by the Executive's decree-law and had been extended to all persons guilty of such offences, including military personnel, and a penalty set of up to 15 years' imprisonment. The Decree-Law concerned also contained provisions regarding the responsibility to provide information and the receipt of complaints pertaining to the register.

66. Ms LINARES ARENAZA (Peru) said that the high-level commission had been appointed by the President and would receive and evaluate suggestions for improvements to the Constitution emanating not just from the political parties but from all the representative bodies and institutions of the country. Those suggestions would be put before the new Democratic Constituent Congress, and the Congress and not the commission would decide on them.

67. The arrangements for the register of complaints of disappearances included provision for a penalty of up to 15 years' imprisonment for officials or public servants who committed acts facilitating the disappearance of persons. The purpose of the register of detainees, on the other hand, was to speed up the public investigation of complaints of disappearances. One article in the new Decree-Law provided a further guarantee of government investigation of complaints of disappearances: officials were required to provide information to the regional procurator for transmittal to the Government Procurator, who in turn was required to prepare a monthly report on all disappearances in the different distritos fiscales of the country for submission to the National Human Rights Council of the Ministry of Justice.

68. The CHAIRMAN reminded Committee members that their concluding remarks, to be delivered at the next meeting, should refer not only to Peru's supplementary reports (CCPR/C/51/Add.5 and 6) but also to the main second periodic report (CCPR/C/51/Add.4) considered at the Committee's spring session.

The meeting rose at 6.05 p.m.